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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 151.

A. M. GILSTRAP,

Petitioner,

vs.

STANDARD OIL COMPANY (an Ohio corporation), and STANDARD OIL COMPANY OF CALIFORNIA (a corporation), SAN MARTINEZ OIL COMPANY (a corporation), J. A. BROWER, and W. N. BROWER, EARL WARREN, JOE BRANDON, M. B. DRIVER, ROBERT P. TRACY, SAMUEL BERRY, GEORGE C. PERKINS, DONALD A. PEARCE, W. H. DONAHUE, KATIE A. CONNIFF, FRANK M. CARR, L. E. VAN PATTEN, HUGO RADBRUCH, and MARK W. GARBINI, and HEARST PUBLICATIONS, INCORPORATED (a corporation), THE CHRONICLE PUBLISHING COMPANY (a corporation), THE TRIBUNE PUBLISHING COMPANY (a corporation),

Respondents.

Petitioner's Reply Brief to Respondents, Hearst Publications, Incorporated, The Tribune Publishing Company and The Chronicle Publishing Company, Herein, on Granting Writ of Certiorari.

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A. Opinions Below.

So that counsel here for all three respondent newspapers be NOT further "confused" (". . . confuse Case No. 150"; their Brief p. 2) as to decision(s), it, the decision in U. S. CIRCUIT COURT OF APPEALS, 9th Circuit, covers both cases, No. 150 and No. 9200, now here as No.

151,—to which respondents have lastly, and only as to No. 151, obligingly responded,—said reported decision(s) in:

Gilstrap v. Standard Oil Co., et al., 108 Fed. (2d) 736.

B. One Copy Record in Respondents' Hands.

One COPY of record certainly sufficient, and Volumes No. 150 and No. 151 printed separately, amply showing ("with whom") May It Please The Court,—Respondents (3) here, may have, or did join . . . *the same conspiracy* [Whole Record, No. 151]:

> "all defendants in furtherance of said plan *and same scheme aforesaid,* and while this plaintiff so owned, controlled, held and *operated his said business,* these same defendants all so continuing. . . ." [Par. XVIII, No. 151, p. 103; formerly No. 9200, 9th Circuit.]

> "The bill was in triplicate, *one copy* thereof being delivered. . . ." *was sufficient.*

Armour Packing Co. v. U. S., 209 U. S. 56, at 67.

C. Jurisdiction and Venue.

Answering first, respondents, (2), (a), (b) and (c) (Their Brief p. 2):

As TO (A).

Petitioner A. M. Gilstrap (No. 151) shows this Honorable Court that he personally (was) assured that long since,—upon filing Petition for Writ(s), the Hon. Paul P. O'Brien, Clerk U. S. Circuit Court of Appeals, San

Francisco, has forwarded one original certified record (of No. 151) with copies, being Transcript No. 151 here under scrutiny and for High Court's attention. Forty more copies are there, San Francisco, ready to be sent up at this Court's pleasure.

As to (b).

This Honorable Court being in vacation, Clerk advised printing and then serving of and by printed copies Petition, which when printed copies received by A. M. Gilstrap, Fresno, California, were then promptly placed in hands of R. C. W. Friday [Appendix, Petitioners' Reply to "Standard of Ohio"] upon his arrival from Iowa, and were by R. C. W. Friday at once served upon all counsel for respective newspapers, on said August 12, 1940, or thereabouts.

Too, said filing of Petition for Writ(s) Air-Mailed via Special Delivery, too, by A. M. Gilstrap *et al.*, June 11, 1940, and thereby within three months, was within time.

Rogers v. Hill, 289 U. S. 582, at 586;

Act of Feb. 13, 1925, Subsection 8(a), Appendix, Vol. 11, Court Rules, p. 42.

As to (c).

Petitioner, A. M. Gilstrap, resubmits, that whole Printed Petition for Writ, as to No. 151, even as to all respondents meritoriously sets forth ample facts (alleged, of course) and correctly rereferred to sufficiently to merit granting of Writ as to this No. 151, so far as these (3) respondents are concerned, having on dates certain (so amply alleged, as to facts . . .) thereby joined the conspiracy.

D. Answering, Next, Respondents' (1) (a), (b), (c) and (d). (Their Brief, pp. 1 and 2.)

Such purported "POINTS" *are all beside the point:*

> "Petitioner . . . business which wholly *destroyed by all of Respondents' tortious acts,* and suffered the damages Prayed for . . . and *likewise in No. 9200," not confusing,*

already pointed out, that No. 9200 is now here as No. 151, nor should they be confused as to their part therein. (Printed Petition, p. 5.) And, same A. M. Gilstrap, sole petitioner as to said No. 151.

E. As to "Allegations of Amended Complaint," No. 151.

Further, thereby, these respondent newspapers, among *"the defendants did accuse, charge, without basis therefor,* and did state and allege, and did so give out 'to the world' and did print, publish, distribute and broadcast *in said Districts,* in all of Northern California, *and in all of Southern California* and elsewhere outside of said State the statements, stories, words of defamation, figures and charges of and concerning this plaintiff, as herein alleged, for the purposes and by all said defendants' intent to that end . . ." [End paragraph VIII, Tr. p. 87, fol. 81.] in No. 151, no longer confusing, as to their part therein.

The said publications, about (alleged) fraudulent practices of ". . . this plaintiff and members of his fam-

ily . . ." such publications . . . "to blacken, discredit, besmirch, and libel this plaintiff and members of his family . . ." were ". . . all by said defendants broadcast as aforesaid concerning this plaintiff . . ." No. 151 [paragraph XII, Tr. pp. 91-92-93, fols. 84-86]; and, likewise, ". . . to blacken, discredit, besmirch and libel this plaintiff . . ." too, to further broadcast,—another defendant acting in concert [paragraph XV, Tr. pp. 97-98-99-100, fols. 88-91]; each such October 25, 1932, in No. 151, publications and articles in said newspapers, as well, as "That each defendant and said Earl Warren in particular well knew, that Exhibit 'A' annexed" to First Amended Complaint [Tr. p. 133, *et seq.*], was but an option for and if oil lands proven; and NOT ever any violation by plaintiff of any laws of California. Exhibit "A" [at Tr. p. 133, fols. 115-117] and, Exhibits "B" and "B-1" [Tr. pp. 136-145, fols. 117-122], the latter being the THEN *Attorney General Opinion,* as to probable, if any, violation of Corporate Securities Act; of which there was none, as well known to said Earl Warren and all his then agents. [Paragraph XVI, Tr. p. 101, fols. 91-92-93 in No. 151.]

That, all of defendants' conduct was "published with malicious intention . . ." [Tr. p. 102 fols. 92-93, No. 151], and, likewise, was same the facts as to further publications, of and concerning same plaintiff and his family aforesaid; being on subsequent date, October 26, 1932, in bolder type [paragraphs XVIII and XXI, Tr. pp. 104-105-106, fols. 93-94-95; pp. 109-112, fols. 97-

100]; all such flagrant blacklisting of plaintiff "to the world" being made, in spite of plaintiff nor any member of his wholesome family never having ever violated any laws whatsoever, and specifically in light of Exhibits "A", "B" and "B-1" [Tr. p. 133, etc., fols. 116-122], showing there was NO LAW then within scope of our inquiry in existence in State of California which plaintiff might violate, had he wished to do so! (All citations here in No. 151.)

Thereupon, petitioner shows this Honorable Court that each and every defendant in District Court, made therein such defendants, Earl Warren, *et al.* [paragraph VI, Tr. p. 84, fols. 78-79], and all named thereby *maliciously had violated anti-trust laws* of United States [paragraph XVIII, Tr. p. 103, fols. 93-94], whole, First Amended Complaint herein [Tr. pp. 80-145, fols. 75-122], which by whole thereof, involves a dispute or controversy properly within the jurisdiction of this Court. [Paragraph XXI of First Amended Complaint, Tr. p. 109.] And, whole matter is Federal question here for full consideration as such.

Eastern States Retail Lumber Dealers Asso. v. United States, 234 U. S. 600;

No. 151, at 418-429 and 446;

Specification of Error, further set out for this Court, beginning with "ARGUMENT," in Petition for WRIT, pp. 18-27 on File.

F. Not in Wrong District.

And, defendants, respondents here, variously joining the abominable scheme somewhere along the line, that damages action for violation of provisions of Anti-Trust Act lies against each defendant herein, to-wit:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws *may sue therefor in any district court* of the United States *in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy,* and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.'
>
> 15 *U. S. C. A.,* Sec. 15;
>
> *Wogan v. Am. Sugar Ref. Co.,* 215 Fed. 273;
>
> *Printed Petition on File,* pp. 23-24;
>
> *United Copper v. Am. Copper,* 232 Fed. 574, 577.

Too, . . .

> ". . . in that district" . . . sufficiently alleged, . . . "pursuant to the conspiracy."
>
> *United States v. Socony Vacuum Oil Co., et al.,* 60 S. Ct. 811, at 820.

And, . . .

> ". . . and it is well settled that conspiracies under the Sherman Act are not dependent on any overt act other than the act of conspiracy."
>
> *U. S. v. Socony Vacuum Oil Co.,* 60 S. Ct. 811, at 858.

Citing:

Nash v. U. S., 229 U. S. 373, at 378.

Petitioner, . . . "this plaintiff, A. M. Gilstrap and Austin M. Gilstrap is one and the same person, *now past middle age* and having spent his whole adult life in successful venture and discovery of such aforesaid commercial products, of and from fields, of his selective nature thereby too, venturing wholly for benefit of public in and as well without state of California. Too, to put thereby much of such products, from aforesaid acreages, upon the Markets of United States and elsewhere *but for the malicious conduct of all defendants herein* mentioned" [VII, First Amended Complaint; R. 85-86, No. 151.] (Printed Petition Herein on File, p. 8.)

Eastern States Retail Lumber Dealers Asso. v. U. S., 234 U. S. 600;

Buckeye Powder Co. v. DuPont, etc., 196 Fed. 514.

"It matters not that the injury may be due to the conduct of those engaged in intrastate operations."

Schechter v. United States, 295 U. S. 495, at 544; *Printed Petition*, p. 19.

"The close and intimate effect which brings the subject within reach of Federal Power may be due to *activities in relation to productive industry*, although that industry when separately viewed is local."

Santa Cruz Fruit Packing Co. v. N. L. R. B., 303 U. S. 453, 82 L. Ed. 954.

And, as to No. 9200, now here as No. 151, *intent to monopolize* . . . fully accomplished. (Printed Petition, pp. 22-23.) Restraint upon interstate commerce (Printed Petition, p. 22) was thereby there.

G. No Diversity of Citizenship Necessary Here.

It would appear, therefore, that respondents, three (3) newspapers, fully in error, themselves, as to any diversity of citizenship, etc., being any "Point" to their argument.

> "And the amount of interstate or foreign trade is not material."
>
> *U. S. v. Socony Vacuum Oil Co., et al.,* 60 S. Ct. 811, at 845.

Citing:

> *Montague & Co. v. Lowrey,* 193 U. S. 38.

H. No Statute of Limitations Applies Here.

And, as to any Statute of Limitations ever applying same, respondent newspapers are likewise in error:

> "A conspiracy thus contained is in effect renewed during each day of its continuance."
>
> *U. S. v. Socony Vacuum Oil Co. et al.,* 60 S. Ct. 811, at 846.

Citing:

> *U. S. v. Borden Co.,* 308 U. S. 188.

The whole, of whole conspiracy, as alleged, respondents,

> ". . . acting in unison as further enumerated particularly in Paragraph VI [R. 84-85, in No. 9200) . . . being from '1930 to *and including the year 1937* [R. 84 (79) No. 9200] *so that such conspiracy and scheme curtails petitioners'* potential shipments, commerce is obviously affected, . . ." (PETITION FOR WRIT, No. 151, being said No. 9200, referred to as above, at PETITION, Printed copy p. 7.)

Verified, first amended complaint, filed Jan. 3, 1939, but cause first filed Nov. 3, 1938. [R. 45, No. 151.]

I. Complaint, Under Federal Question.

(Petition pp. 22 and 23.)

And, at first hearing March 13, 1939, His Honor at once in District Court, obviously observed, cause of action might be Federal question [R. 380, No. 151]:

> "While it is true that in many instances of anti-Trust cases blacklisting has been the instrument through which the *restraint in trade was achieved and recovery was allowed.* . . ."

His Honor was at once in Court presented with citation,—*Eastern States Retail Lumber Dealers Asso. v. U. S.*, 234 U. S. 600, therein such matter being found to be Federal question, but Court . . . in Los Angeles, thought otherwise! *Thereby, here as to such Federal question.* [R. 418, No. 151.]

J. Whereupon, Petitioner No. 151 Submits First Amended Complaint States a Cause of Action Against All Defendants, and Relies on Each and Every Specification of Error, Set Out in Full in Pages 18-27, Printed Petition on File.

Adverse Order of Court, March 13th, 1939 [Tr. pp. 372-376], and Reporter's Transcript, said Mar. 13, 1939 [Tr. pp. 377-387] thereupon Judgments appealed from, at [Tr. pp. 387-388]: "Except to whole" of Judgment in favor of Standard Oil Co., an Ohio corporation, particularly to: ". . . and evidence having been introduced . . ." [near top [356] p. Tr. 388]. Other Judgments appealed from, also [Tr. pp. 389-393, in No. 151] here should now be reversed likewise 108 F. (2d) 736.

The Supreme Court (1904), speaking by Mr. Justice Holmes, in *Swift v. United States,* 196 U. S. 375, 395, 25 Sup. Ct. 276, 279, 49 L. Ed. 518, at 522, is aptly followed in 196 Fed. 514, at 521 and 522 (in 1912):

> "To require the party injured by the conspiracy denounced by the Anti-Trust Act to set out his cause of Complaint with that degree of nicety and precision in stating times, places, methods, and persons as is required in the ordinary common-law pleading, would be to nullify the beneficent purpose of the statute. If the *pleader sets out with reasonable certainty and definiteness* the causes which resulted to his injury, and *connect the defendant therewith,* and from such allegations the defendant is apprised of the character of the accusation, and it is not apparent that he will be prejudiced in making his defense, a declaration will not be struck out even though it may contain some statements of a general and indefinite character, and shall fail to disclose the exact times and places when some of the alleged steps in furtherance of the conspiracy were carried on, or the names of all persons employed therein."

Buckeye Powder Co. v. Du Pont etc. Co., 196 Fed. 514, at 522;

Monarch Tobacco Works v. Am. Tobacco Co., 165 Fed. 744;

Overland Pub. Co. v. Crocker Co., 193 Cal. 109;

Peck S. S. Line v. N. Y. etc. S. S. Co., 2 Porto Rico F. 109;

Penn. Sugar Ref. Co. v. Am. Ref. Co., 166 Fed. 254;

Thomsen v. Union Castle M. S. S. Co., 166 Fed. 251.

Attacking one's credit, by false statements, is forbidden by Anti-Trust Act; especially by its, such injury to one's business.

Buckeye Powder Co. v. DuPont etc. Co., 196 Fed. 514, at 524-525.

Citing:

Lowe v. Lawler, 208 U. S. 274.

And, by said last two cited cases, just above,—Motions to Strike Declaration; and, herein all Motions of Defendants to Dismiss, all amounting to Demurrers, should have been overruled. And, action alleged for damages lies, under Anti-Trust laws.

Lowe v. Lawler, 208 U. S. 274;

Gen. Inv. Co. v. St. L. B. & M. R. Co., 260 U. S. 261, at 287.

Petitioner respectfully submits that certiorari herein be granted.

Dated Sept. 4th, 1940.

R. C. W. FRIDAY,
Attorney for Petitioner.

A. L. WIRIN,
Of Counsel.

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Respondents.

PETITIONER'S REPLY BRIEF
to "Opposition" by Standard Oil Company of California; and

REPLY BRIEF
to "Brief of Defendants" Earl Warren and Eight Other Respondents Herein.

ON PETITION FOR WRIT(S) OF CERTIORARI.

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B. Whereupon petitioner No. 151 submits first amended complaint states a cause of action against all defendants, and relies on each and every specification of error, set out in full in pages 18-27, printed petition on file 5

C. Friday's zeal [Tr. p. 385 in No. 151] doubtless to blame, for first co-plaintiffs, variously mentioned in original complaint, filed Nov. 3, 1938, but dismissed as to Cora D. Gilstrap and Vera G. White [Tr. p. 196 (169)] no one appealing therefrom 8

D. The statute provides in such a case that anyone injured in his business or property by anything forbidden by the anti-trust laws of the United States shall recover treble damages and reasonable attorneys' fee; ". . . all defendants in furtherance of said plan and scheme, and while the plaintiff so owned, held and operated his said business . . ." [Par. XXI, Tr. p. 109], appellant thereby damaged . . . from "1930 to and including the year 1937 [Tr. p. 84 (79) in No. 151] 8

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PETITIONER'S REPLY BRIEF
to "Opposition" by Standard Oil Company of California; and

REPLY BRIEF
to "Brief of Defendants" Earl Warren and Eight Other Respondents Herein.

ON PETITION FOR WRIT(S) OF CERTIORARI.

Opinion (No. 151) Below.

"Brief of Defendants," being nine (9) individual respondents, to petition for writ(s), herein agree with Standard Oil of California, a Delaware corporation, hereinafter referred to as "Standard of California," that opinion below, reported in 108 Fed. (2d) 736, and [R. 446, No. 151] being same opinion by U. S. Circuit Court

of Appeals, Ninth Circuit, affirming (Los Angeles) District Court, remarks of said District Court, at R. 377-387; but petitioner adds that: Minutes, March 13, 1939, do begin at R. 371-372.

"Standard of California" (a Delaware corporation) [R. 374] had filed an answer [R. 277-287], *but not verified.*

The nine (9) respondents who now appear here, on "Brief of Defendants": Earl Warren *et al.,* general appearance for them, by James H. Oakley, Esq., in that behalf [VII, R. 373] appear here, with F. Bert Fernhoff, and John W. Collier, and Homer W. Buckley, for Robert P. Tracy, who is among the number, being nine respondents. Their brief, dated September 4, 1940, while "Standard of California" brief, dated September 5, 1940.

And, among other respondents, one Donald A. Pearce filed no brief (Printed Petition, pp. 23) as yet.

Preliminary Statement.

"Preliminary Statement" in said "Brief of Defendants" as to this, No. 151, should therefore include remark, at least, that: Minutes begin at, March 13th, 1939, at R. 371; and, at 11:28 o'clock a. m., cause continued to 3 o'clock p. m. [R. 375, No. 151.]

Jurisdictional Statement.

"Standard of California" admits Petition for Writ(s) was filed on ". . . the last day of the three months' period . . .," which, thereby, petitioner insists is within three months!

Statement(s) of the Case, No. 151.

Petitioner, here replying to two (2) briefs, one by "Standard of California", evidently written by them September 5, and other brief, as to No. 151, written on September 4, each in its own way, seem to be divergent, "quite" in their separate views: One brief on most wholly asserting "lack of diversity of citizenship" (9 Respondents Brief, p. 3), almost wholly avoiding the assertion throughout Petitioner's Printed Petition for Writ(s) that each defendant, at some time, joined the conspiracy: *from "1930 to and including the year 1937"* [R. 84] (79) No. 9200, which is No. 151.

(Printed Petition herein, p. 7.)

Cause filed November 3, 1938 (says Standard of California Brief, p. 2), so how could any statute of limitations apply?

The nine respondents again insist on their domiciles being up north, in other than district where cause filed (their Brief, pp. 2-3), but already petitioner A. M. Gilstrap, chief victim (and Cora D. Gilstrap, his wife, and Vera G. White, his daughter, in No. 150), set out sufficient detail, for on Printed Petition for Writ(s) whole point here being whether any Federal question is in No. 151, thereby involved in the controversy. Once, any defendants below . . . may have, or (as it is amply alleged) did, then and there or theretofore join in with any . . . conspiracy, writer this Reply Brief knows of no way "they" may unravel themselves therefrom, except to "Answer" the charges; and, per (Printed Petition, pp. 23, 24, 25, 26, 27) and 15 U. S. C. A., Sec. 15 set out, thereat, Petitioner A. M. Gilstrap, as to No. 151,

again reiterates: "D. Officials' Unofficial Unwarranted Acts Deplored," even as much as though, in the night time, any number of them even join in killing one member of his said family. [R. 125, No. 151.] (Printed Petition, pp. 23, 24, 25, 26, 27.)

And ". . . and one Pearce . . . filing no Brief!" (Printed Petition, p. 23.)

Their whole "Statement of the Case" by nine respondents in their "Brief of Defendants" of September 4th, as to No. 151, falls by its own weight, respondents, each having been joined as defendants, with others ". . . in that district . . ." where some of the activity ". . . *pursuant to the conspiracy;*" ". . . Los Angeles County . . ." [R. 85] and elsewhere.

> *United States v. Socony Vacuum Oil Co. et al.*, 60 S. Ct. 811, at 820.

And the whole point is: *Whether Federal Question?* See, herein, primarily: [Specification of Errors, R. 417-418, etc., No. 151.]

There was *no* hearing on original Complaint, but (*ex parte*) Order obtained, December 8, 1938, by R. C. W. Friday granting to January 3rd, 1939 [R. 411, No. 151] for to file First Amended Complaint,—R. C. W. Friday having *not* written the original Complaint [R. 439] notwithstanding "Standard of California" inference that ". . . after a hearing, supplanted by a first Amended Complaint" (Their Brief, p. 2) which hearing *not* ever had, as inferred.

Therefore, "Complaint" under Federal Question.

ARGUMENT.

A. Complaint, Under Federal Question.

(Petition, pp. 22 and 23.)

And at first hearing, March 13, 1939, His Honor at once in District Court, obviously observed, cause of action might be Federal question [R. 380, No. 151]:

> "While it is true that in many instances of anti-Trust cases blacklisting has been the instrument through which the *restraint in trade was achieved and recovery was allowed.* . . ."

His Honor was at once in Court presented with citation, —*Eastern States Retail Lumber Dealers Ass'n v. U. S.*, 234 U. S. 600, therein such matter being found to be Federal question, but Court . . . in Los Angeles, thought otherwise! *Thereby, here as to such Federal question.* [R. 418, No. 151.]

B. Whereupon Petitioner No. 151 Submits First Amended Complaint States a Cause of Action Against All Defendants, and Relies on Each and Every Specification of Error, Set Out in Full in Pages 18-27, Printed Petition on File.

Adverse Order of Court, March 13th, 1939 [Tr. pp. 372-376], and Reporter's Transcript, said March 13, 1939 [Tr. pp. 377-387], thereupon Judgments appealed from, at [Tr. pp. 387-388]: "Except to whole" of Judgment in favor of Standard Oil Co., an Ohio corporation, particularly to: ". . . and evidence having been introduced . . . " [near top [356] Tr. p. 388]. Other Judgments appealed from, also [Tr. pp. 389-393, in No. 151] here should now be reversed likewise, 108 Fed. (2d) 736.

The Supreme Court (1904), speaking by Mr. Justice Holmes, in *Swift v. United States,* 196 U. S. 375, 395, 25 Sup. Ct. 276, 279, 49 L. Ed. 518, at 522, is aptly followed in 196 Fed. 514, at 521 and 522 (in 1912):

> "To require the party injured by the conspiracy denounced by the Anti-Trust Act to set out his cause of Complaint with that degree of nicety and precision in stating times, places, methods, and persons as is required in the ordinary common-law pleading, would be to nullify the beneficent purpose of the statute. If the *pleader sets out with reasonable certainty and definiteness* the causes which resulted to his injury, and *connect the defendant therewith,* and from such allegations the defendant is apprised of the character of the accusation, and it is not apparent that he will be prejudiced in making his defense, a declaration will not be struck out even though it may contain some statements of a general and indefinite character, and shall fail to disclose the exact times and places when some of the alleged steps in furtherance of the conspiracy were carried on, or the names of all persons employed therein."

Buckeye Powder Co. v. Du Pont etc. Co., 196 Fed. 514, at 522;

Monarch Tobacco Works v. Am. Tobacco Co., 165 Fed. 744;

Overland Pub. Co. v. Crocker Co., 193 Cal. 109;

Peck S. S. Line v. N. Y. etc. S. S. Co, 2 Porto Rico F. 109;

Penn. Sugar Ref. Co. v. Am. Ref. Co., 166 Fed. 254;

Thomsen v. Union Castle M. S. S. Co., 166 Fed. 251.

Attacking one's credit, by false statements, is forbidden by Anti-Trust Act; especially by its such injury to one's business.

Buckeye Powder Co. v. DuPont etc. Co., 196 Fed. 514, at 524-525.

Citing:

Lowe v. Lawler, 208 U. S. 274.

And, by said last two cited cases, just above,—Motions to Strike Declaration; and, herein all Motions of Defendants to Dismiss, all amounting to Demurrers, should have been overruled. And, action alleged for damages lies, under Anti-Trust laws.

Lowe v. Lawler, 208 U. S. 274;

Gen. Inv. Co. v. St. L. B. & M. R. Co., 260 U. S. 261, at 287.

C. Friday's Zeal [Tr. p. 385 in No. 151] Doubtless to Blame, for First Co-Plaintiffs, Variously Mentioned in Original Complaint, Filed Nov. 3, 1938, but Dismissed as to Cora D. Gilstrap and Vera G. White [Tr. p. 196 [169]] No One Appealing Therefrom.

D. The Statute Provides in Such a Case That Anyone Injured in His Business or Property by Anything Forbidden by the Anti-Trust Laws of the United States Shall Recover Treble Damages and Reasonable Attorneys' Fee; ". . . All Defendants in Furtherance of Said Plan and Scheme, and While the Plaintiff so Owned, Held and Operated His Said Business . . ." [Par. XXI, Tr. p. 109], Appellant Thereby Damaged . . . From "1930 to and Including the Year 1937 [Tr. p. 84 [79] in No. 151.]

Throughout First Amended Complaint, Par I [Tr. p. 81] and Par. IV [Tr. p. 83], it is alleged, various Defendants

> *". . . were and now are interested in and engaged in leasing, owning, exploring and drilling mineral-bearing lands, and in the business of producing, refining and selling oil, natural gas and other hydrocarbon substances in, and without the State of California."*

If such, and others acting in unison, as further enumerated, particularly in Paragraph VI [Tr. pp. 84-85] engage exclusively in interstate commerce in petroleum, destroy all right of possession, all titles to petroleum lands, and the apparatus of another (the Plaintiff-Appellant's) and prevent him from producing and shipping in commerce

great quantities of mineral which are in demand, for many years, being from "1930 to and including the year 1937" [Tr. p. 84 [79]] so that such conspiracy and scheme curtails potential shipments, commerce is obviously affected; but in the course of such exclusive business and object is there no danmage by "reason of anything forbidden by the Anti-Trust laws"?

In one case it was contended that contracts, licensing, and purely local transactions not actually in transportation, were not actionable under the Anti-Trust laws. But the Supreme Court said: "This contention is not sound."

Standard Oil Co. v. United States, 283 U. S. 163.

Too, thereunto we add the whole of Specification of Error,

"1.

That, in view of: 'It is unlawful to issue a black-list even though not so labeled, where it is calculated to restrict business for the persons so listed' (Federal Antitrust Guide, page 35, citing Eastern States Retail Lumber Dealer Asso. vs. U. S., 234 U. S. 600); the Hon. District Court, Los Angeles, Erred in its Order [Tr. 337-340] of March 13, 1939, in its every detail by which said Hon. Court held: 'The Complaint does NOT state a cause of action under the Anti-Trust Law because none of the allegations here would support such an action' [Tr. 347], having reference, of course, to First Amended Complaint, filed January 3rd, 1939, herein [Tr. 77—] notwithstanding the prior observation: *'There is the*

statement that the plaintiff enjoyed a good reputation and that, for the purpose of blackening and discrediting and besmirching and libeling him and the members of his family, the defendants published the various articles.'" [Tr. 344, in No. 151.]

Eastern States Retail Lumber Dealers Ass'n v. U. S., 234 U. S. 600.

It is, too, well said by Hon. Leon R. Yankwich, December 4, 1937:

> "If the observable facts are such as to warrant the belief in the mineral character of lands, whether they were such as would sanction investment is an inference which may be drawn by the trier of facts from the facts on which the conclusion as to the existence of the belief is grounded."
>
> *United States v. Standard Oil Co.*, 21 Fed. Sup. 645, 650.

Petitioner respectfully submits that certiorari herein should be granted.

Dated: September 16th, 1940.

R. C. W. FRIDAY,
Attorney for Petitioner.

A. L. WIRIN,
Of Counsel.

FILED
SEP 30 1940
CHARLES ELMORE CROPLEY
CLERK

In the

Supreme Court of the United States

October Term, 1940
No. 150.

A. M. GILSTRAP, CORA D. GILSTRAP, and VERA GILSTRAP WHITE,

Petitioners,

vs.

STANDARD OIL COMPANY, an Ohio corporation, and STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation [R. 81, No. 151], *et al.*,

Respondents.

PETITIONERS' REPLY BRIEF
to "Opposition" by Standard Oil Company of California; and

REPLY BRIEF
to "Brief of Defendants" Earl Warren and Four Other Respondents Herein.

(Four remaining Respondents herein silent thus far!)

ON PETITION FOR WRIT(S) OF CERTIORARI.

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(Four remaining Respondents herein silent thus far!)

ON PETITION FOR WRIT(S) OF CERTIORARI.

Opinion (No. 150) Below.

"Brief of Defendants," being five (5) individual respondents, to petition for writ(s), herein agree with Standard Oil of California, a Delaware corporation, hereinafter referred to as "Standard of California," that opinion below, reported in 108 Fed. (2d) 736, and [R. 446, No. 151] being same opinion by U. S. Circuit Court of Appeals, Ninth Circuit, affirming (Los Angeles) District Court, remarks of said District Court, at R. 283-6. First hearing, at R. 131, No. 150.

The five (5) respondents who now appear here, on "Brief of Defendants": Earl Warren *et al.*, general appearance for them, by James H. Oakley, Esq., in that behalf appear here, with F. Bert Fernhoff, and John W. Collier, and Homer W. Buckley, for Robert P. Tracy, who is among the number, being five respondents. Four others still remain silent! Their brief, dated September 4, 1940, while "Standard of California" brief, dated September 5, 1940.

And, among other respondents, one Donald A. Pearce filed no brief (Printed Petition, p. 23) as yet. And, ". . . J. A. Brower makes no Affidavit herein . . .", our Reply to "Standard of Ohio," page 3. Others as to citizenship primarily.

Jurisdictional Statement.

"Standard of California" admits Petition for Writ(s) was filed on ". . . the last day of the three months' period . . .," which, thereby, petitioner insists is within three months!

Statement of the Case.

Petitioners, all Three agree with First Paragraph in matter of No. 150, in James H. Oakley's *et al.* Brief of September 4th, just filed herein, except still, *four other Respondents* are silent as to No. 150. And, Petitioner, A. M. Gilstrap has already filed his Sept. 16th Reply Brief in No. 151.

Reply to three (3) Newspapers has also been filed.

"No *Diversity of Citizenship Necessary Here . . .*," see "G", page 9 of Reply to said Newspapers, filed about September 10, 1940.

> "And the amount of interstate or foreign trade *is not material.*"
>
> *U. S. v. Socony Vacuum Oil Co., et al.,* 60 S. Ct. 811, at 845.

Citing:

> *Montague & Co. v. Lowrey,* 193 U. S. 38.

Hence, "spread-eagle" Affidavits, *re* "Official Capacity" of Earl Warren, Joe Brandon, M. B. Driver, George C. Perkins, Robert P. Tracy (their Brief, Sept. 4, pp. 2 and 3) avail them nothing.

The difference in the two Amended Complaints [No. 150, R. 3 and R. 135], and principal reason for including the first amended complaint in this Record (No. 150) arises from the joinder of these individuals in the First Complaint, who had so acted in an individual capacity but who with mental reservations, apparently, who (the five of them, to whom this Brief addressed) *because of being* (then) *incumbents of Public Office saw fit to so "allege"*

by SPEAKING DEMURRERS! And, thereby, the five mentioned Respondents, by their "Brief of Defendants" wish too, to take refuge behind a color of office to justify unlawful acts in carrying out the concert of mind and action that resulted in the destruction of property rights which it is alleged was their sole "objective" with all other named Defendants!

These five (5) respondents, as to No. 150, insist on their domiciles being up north, in other than district where cause filed (their Brief, pp. 2 and 3), but already petitioner A. M. Gilstrap, chief victim (and Cora D. Gilstrap, his wife, and Vera G. White, his daughter, in No. 150), set out sufficient detail, for on Printed Petition for Writ(s) whole point here being *whether any Federal question is in No. 150* and No. 151, thereby involved in the controversy. Once, any defendants below . . . may have, or (as it is amply alleged) did, then and there or theretofore join in with any . . . conspiracy, writer this Reply Brief knows of no way "they" may unravel themselves therefrom, except to "Answer" the charges; and, per (Printed Petition, pp. 23, 24, 25, 26, 27) and 15 U. S. C. A., Sec. 15, set out thereat, Petitioner A. M. Gilstrap, as to No. 151, and all Petitioners, as to No. 150 again and again reiterate: *"D. Officials' Unofficial Unwarranted Acts Deplored,"* even as much as though, in the night time, any number of them even join in killing one member of his said family. [R. 125, No. 151.] (Printed Petition, pp. 23, 24, 25, 26, 27.)

And ". . . and one Pearce . . . filing no Brief!" (Printed Petition, p. 23.)

Their whole "Statement of the Case" by here as to No. 150, 5 respondents, in their "Brief of Defendants" of September 4th, as to No. 150, falls by its own weight,

respondents, each having been joined as defendants, with others ". . . *in that district* . . ." where some of the activity ". . . *pursuant to the conspiracy;*" " . . . Los Angeles County . . ." [R. 85 in No. 151] and elsewhere.

United States v. Socony Vacuum Oil Co. et al., 60 S. Ct. 811, at 820.

And the whole point is: *Whether Federal Question?* See, herein, primarily: [Specification of Errors, R. 417-418, etc., No. 151.] [In No. 150, Par. XVII, R. 157-159.]

Therefore, "Complaints" under Federal Question.

Whether or not *sufficient false and fraudulent* covenants, through which 40,000 acres of lands and leaseholds were unlawfully and by violence and cunning, wrested from the plaintiffs, with *$80,000.00* worth of equipment and structures, to their damage in business and property, and their shipment and monopoly by an Ohio defendant through local agents and subsidiaries, all of *which restrained the plaintiffs and the public from* producing huge quantities of the *most valuable petroleum known*, paraffin, are alleged to involve interstate commerce from a State which could not consume products coveted by those engaged exclusively in interstate commerce, *no argument was advanced below*, which tended to eliminate such operations from things forbidden by the Anti-Trust laws.

In No. 150, Paragraph XVII [Tr. pp. 157-159, fols. 141-142], contains yet further steps in the protracted plan to *restrain said business,* and to prevent a recurrence of plaintiffs' or other *operators' efforts to put said land on production,* and to disclose the falsity of defendants' published reports of nonproductivity contrary to actual discoveries and records of the Government, taken by violence and fraudulent means, as well as to obtain dismissal of said civil action No. 221682, *which dismissal part of conspiracy.*

Said action No. 221682 mentioned in Paragraph XIV of Complaint, and is alleged in Paragraph XVII [No. 150, at R. 157-158] that damages incurred by loss of all said properties to the time of filing the suit in San Francisco, was more than one-third of the whole amount prayed for herein, or the $10,000,000.00 prayed for therein. Thereafter, and during Petitioner, A. M. Gilstrap's imprisonment, its object of dismissal as part of conspiracy was accomplished, by dismissal said No. 221682 without his knowledge or consent.

Petitioners, herein in No. 150, admit said WARREN, said BRANDON, said DRIVER, said PERKINS, said TRACY, and one PEARCE (who files no Brief) each, too, are Respondents in No. 151, *enlarged conspiracy, against same A. M. Gilstrap, and his wholesome Family,* one member of which, FRED, did virtually succumb by virtue, or rather non-virtue, of all misconduct, of Public Officials' grave misconduct in office, which is putting it mildly [R. 125, No. 151], but *enlarged conspiracy continued down to date of filing within No. 150, which filed September 18, 1937* conceded by footnote (3) bottom of page 7 (Standard of Calif. Brief of Sept. 5, 1940, filed in No. 150 herein.)

ARGUMENT.

And, Therefore, No Statute of Limitations Applies.

The other *silent Respondents,* herein in No. 150, seem to be: J. A. Brower, already mentioned (and, too, in No. 151 [R. 123], in *re* $250,000.00 *payment to him, not denied*); and, herein in No. 150, also silent, heretofore mentioned, Donald A. Pearce; also, E. F. Keller; and, W. N. Brower, Brother of J. A. Brower, the two Browers *being residents in this district, Los Angeles County, State of California, and not denied!* [Par. XII, No. 150, R. 147-149.]

Petitioners' Printed Petition, already sufficiently shows up,—that phase, of the Topic: That, aim and intent, was carried out, *by all the Conspirators.* (Printed Petition, pp. 22 and 23.)

Topic: *"D. Officials' Un-Official Unwarranted Acts Deplored,"* already "quite" briefed, in Printed Petition, pp. 23, 24, 25, 26:

> "For a conspiracy is a partnership in crime; and an 'overt act of one partner *may be the act of all* without any new agreement specifically directed to that act.' "
>
> *U. S. v. Socony Vacuum Oil Co., et al.,* 60 S. Ct. 811, 858.

Too, there's one cause, against all in the conspiracy.

50 *C. J.* 619.

"A conspiracy thus continued is in effect renewed during each day of its continuance."

U. S. v. Socony Vacuum Oil Co., et al., 60 S. Ct. 811, at 846.

Citing:

U. S. v. Borden Co., 308 U. S. 188.

"And the amount of interstate or foreign trade is not material."

U. S. v. Socony Vacuum Oil Co., et al., 60 S. Ct. 811, at 845.

Citing:

Montague & Co. v. Lowrey, 193 U. S. 38.

AND, THEREFORE, NO DIVERSITY OF CITIZENSHIP NECESSARY WHEN, 'Tis Federal Question, herein [No. 150, and whole Record, in No. 150] bears on Anti-Trust Law: #15 U. S. C. A., Sec. 15; Printed Petition, pp. 23 and 24.

"It matters not that the injury may be due to the conduct of those engaged in intrastate operations."

Schechter v. United States, 295 U. S. 495, at 544; *Printed Petition,* p. 19.

"The close and intimate effect which brings the subject within reach of Federal Power may be due to *activities in relation to productive industry,* although that industry when separately viewed as local."

Santa Cruz Fruit Packing Co. v. N. L. R. B., 303 U. S. 453, 82 L. Ed. 954.

The Supreme Court (1904), speaking by Mr. Justice Holmes, in *Swift v. United States*, 196 U. S. 375, 395, 25 Sup. Ct. 276, 279, 49 L. Ed. 518, at 522, is aptly followed in 196 Fed. 514, at 521 and 522 (in 1912):

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Peck S. S. Line v. N. Y. etc. S. S. Co., 2 Porto Rico F. 109;

Penn. Sugar Ref. Co. v. Am. Ref. Co., 166 Fed. 254;

Thomsen v. Union Castle M. S. S. Co., 166 Fed. 251.

AND, HENCE, THE WHOLE MATTER, in No. 150, Too, IS IN PETITIONERS' VIEW, *A Federal Question.*

In Conclusion; Certiorari Should Issue:

Petitioners, *in re* No. 150, resubmit, in entire light of Printed Petition herein on file, as well all Petitioners' Reply Briefs to date on file, That WRIT(S) OF CERTIORARI, also as to No. 150, should issue.

C. E. Stevens Co. v. Foster & Kleiser Co., 109 Fed. (2d) 764; No. 41 This Honorable Court; Certiorari granted May 6th, 1940;

Printed Petition, pp. 26 and 27.

Dated: Los Angeles, California, September 24th, 1940.

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